

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: 9/20/06 - MAR

Division: County Attorney

Bulk Item: Yes xx No

Staff Contact Person: Bob Shillinger

AGENDA ITEM WORDING:

Approval of contract with HDR Engineering, Inc. to provide expert witness services on behalf of Monroe County in *Florida Keys Citizens Coalition & Last Stand v. Monroe County and DCA.*

ITEM BACKGROUND:

Dr. Ricardo Calvo has been retained by the County Attorney's Office to serve as an expert witness in defense against the administrative challenge to the ordinances implementing the Tier system. Dr. Calvo provided consultant services for the Carrying Capacity Study and to growth management staff as it drafted the Tier system.

PREVIOUS RELEVANT BOCC ACTION:

None.

CONTRACT/AGREEMENT CHANGES:

New Agreement

STAFF RECOMMENDATIONS:

Approval

TOTAL COST: Unknown

BUDGETED: Yes xx No

COST TO COUNTY: Unknown

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes No xx **AMOUNT PER MONTH** **Year**

APPROVED BY: County Atty OMB/Purchasing Risk Management

DIVISION DIRECT APPROVAL:  9/5/06
SUZANNE A. HUTTON, COUNTY ATTORNEY

DOCUMENTATION: Included xx Not Required

DISPOSITION:

AGENDA ITEM #

AGREEMENT FOR EXPERT WITNESS SERVICES

THIS AGREEMENT is made as of this _____ day of _____, 2006, between Monroe County ("COUNTY"), a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 and HDR Engineering, INC., ("CONSULTANT") a Nebraska corporation, with principal offices at 2002 N Westshore Blvd., Tampa Florida, 33607, for expert witness and consulting services in connection with the lawsuit or claim known as *Florida Keys Citizens Coalition & Last Stand v. Dept. of Community Affairs and Monroe County*, DOAH 06-2449, an administrative challenge to the adoption of County's tier ordinances ("Litigation");

WHEREAS, COUNTY desires to engage CONSULTANT to provide expert witness and consulting services in the area(s) of natural resources and environmental planning in connection with the Litigation; and

WHEREAS, CONSULTANT desires to render these Services as described in SECTION I, Scope of Services;

NOW, THEREFORE, COUNTY and CONSULTANT in consideration of the mutual covenants contained herein, agree as follows:

SECTION I. SCOPE OF SERVICES

CONSULTANT will provide its employee, Dr. Ricardo N. Calvo, who shall provide expert witness testimony, necessary related research and investigation in the litigation.

SECTION II. COMPENSATION

Compensation for CONSULTANT'S Services under this Agreement shall be as follows:

- Trial testimony and deposition (Dr. Calvo): \$300.00 per hour. (Testimony time shall be a minimum of four hours per day).
- Trial preparation and Consulting (Dr. Calvo): \$225.00 per hour.
- Engineering, scientific and technical support (other staff) shall be as follows:
 - Research: \$100.00 per hour.
 - GIS (environmental, habitat, tier mapping, other): \$90.00 per hour.
 - Document production, administrative support: \$65.00 per hour

SECTION III. PAYMENT

Consultant shall be reimbursed for expenses only to the extent and in the amounts authorized by Section 112.061, Florida Statutes and the Monroe County Code, payment will be made periodically, but no more frequently than monthly, in arrears. Expenses shall be submitted by CONSULTANT and authorized by the COUNTY in writing with backup documentation as required by the Clerk of Court.

The COUNTY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the Board of County Commissioners and the approval of the Board members at the time of contract initiation and its duration.

If the CONSULTANT'S duties, obligations and responsibilities are materially changed by written amendment to this Agreement after execution of this Agreement, compensation due to the CONSULTANT shall be equitably adjusted, either upward or downward.

SECTION IV. PERIOD OF SERVICE

This Agreement shall become effective upon signature by all parties and shall continue in effect until the services are completed or terminated. This Agreement may be terminated by either party, with or without cause, upon seven days written notice to the other party.

SECTION V. NON-WAIVER OF IMMUNITY AND HOLD HARMLESS

COUNTY and CONSUTLANT acknowledge that COUNTY does not waive immunity nor does COUNTY agree to hold the Consultant harmless; notwithstanding the provisions of Sec. 768.28, Florida Statutes, the participation of the CONSULTANT and the COUNTY in this Agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

SECTION VI. CONTROLLING LAW

This Agreement is to be governed by the law of the State of Florida. Venue shall be in Monroe County.

SECTION VII. SEVERABILITY

If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

SECTION VIII. NONDISCRIMINATION

CONSULTANT and COUNTY agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. CONSULTANT or COUNTY agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 13, Article VI, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

SECTION IX. NOTICE

Any notices sent by the parties shall be deemed to have been duly served if delivered in person to the individuals and addresses listed below, or if delivered or sent by first class mail, certified, return receipt, or by courier with proof of delivery. All written correspondence to the COUNTY shall be dated and signed by an authorized representative of the CONSULTANT. The correspondence shall be directed to:

FOR COUNTY:

Mr. Robert Shillinger
Chief Assistant County Attorney
P.O. Box 1026
Key West, Florida 33041

FOR CONSULTANT:

Mr. Ricardo N. Calvo, Ph.D.
HDR Engineering, INC.
2002 N Westshore Blvd.,
Tampa Florida, 33607

SECTION X. NO THIRD PARTY BENEFICIARIES

Nothing contained herein shall create any relationship, contractual or otherwise, with or any rights in favor of, any third party.

SECTION XI. BINDING EFFECT

The terms, covenants, conditions, and provisions of this Agreement shall bind and inure to the benefit of the COUNTY and CONSULTANT and their respective legal representatives, successors, and assigns.

SECTION XII. AUTHORITY

Each party represents and warrants to the other that the execution, delivery and performance of this Agreement have been duly authorized by all necessary County and corporate action, as required by law.

SECTION XIII. ADJUDICATION OF DISPUTES OR DISAGREEMENTS

COUNTY and CONSULTANT agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this Agreement or by Florida law. COUNTY and CONSULTANT specifically agree that no party to this Agreement shall be required to enter into any arbitration proceedings related to this Agreement.

SECTION XIV. COVENANT OF NO INTEREST

CONSULTANT and COUNTY covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this Agreement, and that only interest of each is to perform and receive benefits as recited in this Agreement.

SECTION XV. CODE OF ETHICS

COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to, solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation;

misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

SECTION XVI. EXECUTION

This Agreement, including any exhibits included herein, constitutes the entire Agreement between CONSULTANT and COUNTY, and supersedes and controls over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

(SEAL)

Attest: DANNY L. KOLHAGE, Clerk

BOARD OF COUNTY
COMMISSIONERS OF
MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

Date: _____

By: _____
Mayor/Chairman

HDR Engineering, Inc. "Consultant"

By: Paul Bowdoin

Name: Paul Bowdoin

Title: Senior Vice President

Date: August 23, 2006

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM:

Robert B. Shillinger, Jr.
ROBERT B. SHILLINGER, JR.
CHIEF ASSISTANT COUNTY ATTORNEY
Date: 8-5-6